

**TERMINAL DISCLAIMER TO OBVIATE A  
DOUBLE PATENTING REJECTION  
OVER A PRIOR PATENT**

Docket Number:  
**C1039.70021US01**

In re Application of: Arthur M. Krieg *et al.*  
Application No. 10/719,493  
Confirmation No. 3218  
Filed: November 21, 2003  
For: METHODS OF TREATING CANCER USING  
IMMUNOSTIMULATORY OLIGONUCLEOTIDES

The owner\*, Coley Pharmaceutical Group Inc, of 1/3rd interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. §154 to §156 and §173 as presently shortened by any terminal disclaimer, of prior Patent No. 6,653,292. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. §154 to §156 and §173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. §1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☒ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☐ The undersigned is an attorney or agent of record.

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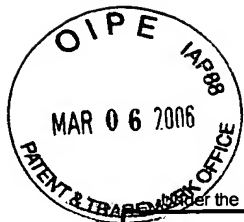
Signature

Date

Robert Bratler  
Typed or Printed Name

☒ Terminal disclaimer fee under 37 CFR 1.20(d) included.

\*Statement under 37 CFR. 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTO/SB/96 may be used for making this certification. See MPEP §324.

**STATEMENT UNDER 37 CFR 3.73(b)**Applicant/Patent Owner: University of Iowa Research Foundation et al.Application No./Patent No.: 10/719,493 Filed/Issue Date: November 25, 2003Entitled: METHODS OF TREATING CANCER USING IMMUNOSTIMULATORY OLIGONUCLEOTIDES

Coley Pharmaceutical Group, Inc., a Corporation  
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or  
2. ☐ an assignee of less than the entire right, title and interest.

The extent (by percentage) of its ownership interest is \_\_\_\_\_ %  
in the patent application/patent identified above by virtue of either:

- A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_.

OR

- B. ☒ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

1. From: Alfred D. Steinberg To: CpG Immunopharmaceuticals, Inc.

The document was recorded in the United States Patent and Trademark Office at  
Reel 011092, Frame 0509, for which a copy thereof is attached.

2. From: CpG Immunopharmaceuticals, Inc. To: Coley Pharmaceutical Group, Inc.

The document was recorded in the United States Patent and Trademark Office at  
Reel 011345, Frame 0669, for which a copy thereof is attached.

3. From: \_\_\_\_\_ To: \_\_\_\_\_

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☐ Additional documents in the chain of title are listed on a supplemental sheet.

☐ Copies of assignments or other documents in the chain of title are attached.  
[NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

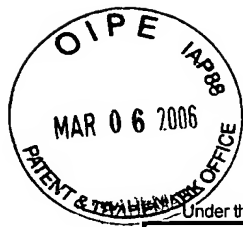
\_\_\_\_\_  
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Telephone Number

\_\_\_\_\_  
Title

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Dated: March 1, 2006 Signature: Helen C. Lockhart (Helen C. Lockhart)

**STATEMENT UNDER 37 CFR 3.73(b)**Applicant/Patent Owner: University of Iowa Research Foundation et al.Application No./Patent No.: 6653292 Filed/Issue Date: November 25, 2003Entitled: METHODS OF TREATING CANCER USING IMMUNOSTIMULATORY OLIGONUCLEOTIDES

Coley Pharmaceutical Group, Inc., a Corporation  
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or  
2. ☐ an assignee of less than the entire right, title and interest.

The extent (by percentage) of its ownership interest is \_\_\_\_\_ %  
in the patent application/patent identified above by virtue of either:

- A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_.

OR

- B. ☒ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

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The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

\_\_\_\_\_  
Signature\_\_\_\_\_  
Date\_\_\_\_\_  
Printed or Typed Name\_\_\_\_\_  
Telephone Number\_\_\_\_\_  
Title

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Dated: March 1, 2006Signature: Helen C. Lockhart (Helen C. Lockhart)



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Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

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NOVEMBER 13, 2000

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HELEN C. LOCKHART  
600 ATLANTIC AVENUE  
FEDERAL RESERVE PLAZA  
BOSTON, MA 02210

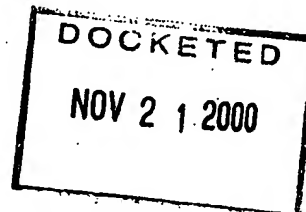
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PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 09/11/2000

REEL/FRAME: 011092/0509  
NUMBER OF PAGES: 2

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

STEINBERG, ALFRED D.

DOC DATE: 10/30/1998

ASSIGNEE:

CPG IMMUNOPHARMACEUTICALS, INC.  
55 WILLIAM STREET, SUITE 120  
WELLESLEY, MASSACHUSETTS 02481

SERIAL NUMBER: 08960774

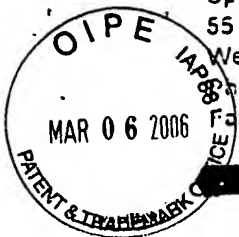
FILING DATE: 10/30/1997

PATENT NUMBER:

ISSUE DATE:

SHARON LATIMER, EXAMINER  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

CpG ImmunoPharmaceuticals, Inc.  
55 William Street, Suite 120  
Wellesley, Massachusetts 02481  
Phone 781-431-6400  
Fax 781-431-6403



October 30, 1998

Alfred D. Steinberg, M.D.  
8814 Bells Mill Rd  
Pctomac, MD 20854

VIA OVERNIGHT COURIER

PERSONAL AND CONFIDENTIAL

Dear Dr. Steinberg:

This is to confirm in writing the understanding reached by the Company and you under which you will serve as a consultant to the Company.

The Company hereby retains you to render such consulting, advisory and related services to the Company in the field of vaccine adjuvants, cancer vaccines and immunomodulation as the Company may reasonably request from time to time. You hereby accept such engagement subject to the terms and conditions set forth herein.

You hereby agree that if you are determined to be an inventor of U.S. patent application Serial No. 09/276,358, entitled "Immunomodulatory Oligonucleotides," you do hereby assign all right, title and interest you may have in such patent application and all related patent applications and patents (including any continuations, continuations-in-part, divisions, extensions, renewals, reissues, revivals, re-examinations and foreign counterparts) to CpG ImmunoPharmaceuticals, Inc. To the best of your knowledge and belief, you are free to assign such ownership interest to CpG without the consent of any third party.

In consideration for the above assignment and your consulting services, you shall receive the option to purchase 50 shares of the Company's Common Stock at a purchase price of \$206.70 per share, with such option to purchase all 50 shares vesting immediately upon execution of this Letter Agreement, and pursuant to the terms of a Non-Qualified Stock Option Agreement to be entered into between the parties hereto. In addition, you shall be paid \$34,335.00 upon the Company's receipt of an executed copy of this Agreement.

This Agreement may be terminated by you for any reason by giving the Company 30 days written notice. In the event that you so terminate this Agreement, you shall be entitled to all valid, non-reimbursed personal expenses incurred by you in connection with performance of your consulting services. The Company may terminate this Agreement only with your written, mutual consent. Regardless of which party terminates this Agreement, the assignment mentioned above shall remain in force, and you shall have 3 months in which to exercise your right to purchase the balance, if any, of the 50 shares of stock not previously purchased.

Please acknowledge your agreement with the foregoing by signing below, keeping one original copy, and returning the other original in the enclosed overnight courier envelope to me for our files. Thanks.

Very truly yours,

Robert L. Bratzler, Ph.D.  
President and Chief Executive Officer

Agreed to and Acknowledged by:

Alfred D. Steinberg, M.D.



FEBRUARY 28, 2001

WOLF, GREENFIELD & SACKS, P.C.  
HELEN C. LOCKHART  
FEDERAL RESERVE PLAZA  
600 ATLANTIC AVENUE  
BOSTON, MA 02210



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Washington, D.C. 20231

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RECORDATION DATE: 12/01/2000

REEL/FRAME: 011345/0669  
NUMBER OF PAGES: 4

BRIEF: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

CPG IMMUNOPHARMACEUTICALS, INC.

DOC DATE: 01/13/2000

ASSIGNEE:

COLEY PHARMACEUTICAL GROUP, INC.  
20 WILLIAM STREET, STE. 115  
WELLESLEY, MASSACHUSETTS 02481

SERIAL NUMBER: 08960774  
PATENT NUMBER:

FILING DATE: 10/30/1997  
ISSUE DATE:

SEDLEY PYNE, PARALEGAL  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

*Office of the Secretary of State*

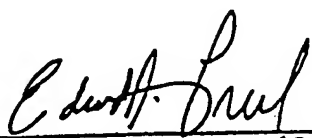
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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "COLEY PHARMACEUTICAL GROUP, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-FIRST DAY OF JANUARY, A.D. 2000.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.



  
Edward J. Freel, Secretary of State

AUTHENTICATION: 0211842

DATE: 01-21-00

2729259 8300

• 001033709

State of Delaware  
Office of the Secretary of State

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PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "CPG IMMUNOPHARMACEUTICALS, INC.", CHANGING ITS NAME FROM "CPG IMMUNOPHARMACEUTICALS, INC." TO "COLEY PHARMACEUTICAL GROUP, INC.", FILED IN THIS OFFICE ON THE FOURTEENTH DAY OF JANUARY, A.D. 2000, AT 9 O'CLOCK A.M.



Edward J. Freel, Secretary of State

2729259 8100

001032990

AUTHENTICATION: 0211581

DATE: 01-21-00



CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
CPG IMMUNOPHARMACEUTICALS, INC.  
PURSUANT TO SECTION 242

It is hereby certified that:


1. The name of the corporation (hereinafter called the "Corporation") is CpG Immunopharmaceuticals, Inc.

2. The Certificate of Incorporation of the Corporation as amended to date is hereby amended by striking out Article FIRST in its entirety and by substituting in lieu thereof the following:

"FIRST: The name of the corporation is Coley Pharmaceutical Group, Inc. (hereinafter sometimes referred to as the "Corporation")."

3. The amendment of the Certificate of Incorporation, as amended, herein certified has been duly adopted and written consent has been given in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

Signed this 3<sup>rd</sup> day of January, 2000.

  
Robert L. Bratzler  
President

*State of Delaware*  
*Office of the Secretary of State*

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PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "CPG IMMUNOPHARMACEUTICALS, INC.", FILED IN THIS OFFICE ON THE SEVENTEENTH DAY OF MARCH, A.D. 1997, AT 9 O'CLOCK A.M.

A CERTIFIED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS FOR RECORDING.



*Edward J. Freel*

Edward J. Freel, Secretary of State

AUTHENTICATION:

2729259 8100

DATE:

8375921

CERTIFICATE OF INCORPORATION  
OF  
CPG IMMUNOPHARMACEUTICALS, INC.

The undersigned, a natural person, for the purpose of organizing a corporation for conducting the business and promoting the purposes hereinafter stated, under the provisions and subject to the requirements of the laws of the State of Delaware (particularly Chapter 1, Title 8 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified and referred to as the "General Corporation Law of the State of Delaware"), hereby certifies that:

FIRST: The name of the Corporation is CPG IMMUNOPHARMACEUTICALS, INC. (hereinafter sometimes referred to as the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is 1013 Centre Road, in the City of Wilmington, County of New Castle. The name of the registered agent at the address is The Prentice-Hall Corporation System, Inc.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which a Corporation may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is forty thousand (40,000) shares, of which stock twenty thousand (20,000) shares, par value of one cent (\$0.01) each, shall be Preferred Stock (the "Preferred Stock") and of which stock twenty thousand (20,000) shares, par value of one cent (\$0.01) each, shall be Common Stock (the "Common Stock").

The Preferred Stock authorized by this Certificate of Incorporation shall be issued in series. The first such series shall be designated Series A Convertible Preferred Stock ("Series A Preferred Stock") and shall consist of three thousand five hundred (3,500) shares.

Except for the Series A Preferred Stock, and except as limited by Article FOURTH, Section 6 hereof, the Board of Directors is authorized at any time, and from time to time, to provide for the issuance of shares of Preferred Stock in one or more series, and to determine the designations, preferences, limitations and relative or other rights of the Preferred Stock or any series thereof. For each series other than the Series A Preferred Stock, and except as limited by Article FOURTH, Section 6 hereof, the Board of Directors shall determine, by resolution or resolutions adopted prior to the issuance of any shares thereof, the designations, preferences, limitations and relative or other rights thereof, including but not limited to the following relative rights and preferences, as to which there may be variations among different series:

- (a) The rate and manner of payment of dividends, if any;
- (b) Whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;
- (c) The amount payable for shares in the event of liquidation, dissolution or other winding up of the Corporation;
- (d) Sinking fund provisions, if any, for the redemption or purchase of shares;

and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ELEVENTH: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of the General Corporation Law of the State of Delaware or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of the General Corporation Law of the State of Delaware, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths (3/4) in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, such compromise or arrangement and such reorganization shall, if sanctioned by the court to which such application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

TWELFTH: The votes of two-thirds (2/3%) of all of the outstanding shares of the capital stock of the Corporation entitled to vote are required to repeal or amend the provisions of this Certificate of Incorporation relating to:

A. the authority of the Board of Directors and the Stockholders to amend the by-laws of the Corporation; and

B. the elimination of directors' personal liability for monetary damages arising from their negligence and gross negligence.

I, the undersigned, being the sole incorporator, for the purpose of forming a Corporation under the laws of the State of Delaware, do make, file and record this Certificate of Incorporation, to certify that the facts herein stated are true, and accordingly have hereto set my hand this 17 day of March, 1997. ✓

Anne T. Leland  
Anne T. Leland

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